

**Application No. 09/715878**  
**Page 6**

**Amendment**  
**Attorney Docket No. S63.2P-10978-US02**

### REMARKS

This Amendment is in response to the Office Action dated February 8, 2005. Each issue in the official action is discussed below. Minor amendments have been made to remove antecedent basis issues.

#### *§112 Rejections*

(3)

Claims 1-19 were rejected under 35 USC §112, first paragraph, as failing to comply with the written description. It is asserted in the official action that the newly added limitation,

"such that the distance between adjacent sides of the wave at points between the point intermediate opposite peaks and each of the opposite peaks is greater than that of the point intermediate opposite peaks",

was not described in the specification.

Applicant has amended the above claim language in claim 1 to read as follows:  
the distance between adjacent sides of a wave segment decreases along a portion of the segment to a minimum and thereafter increases along a portion of the segment,

Support for the claim language is found at least in Fig. 3 as filed. Claim 13 has been similarly amended. Withdrawal of the rejection is respectfully requested.

(5)

Claims 1-19 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. It is asserted in the official action that it is unclear to the Examiner whether:

each of the wave segments as claimed, including three peaks or two peaks and a wave; a wave segment is the same or a wave segment is a segment of a wave; where does a wave start and end and what are the adjacent sides of a wave.

The official action further states that:

**Application No. 09/715878**  
**Page 7**

**Amendment**  
**Attorney Docket No. S63.2P-10978-US02**

The claim language, "each segment containing a pair of opposite looped peaks and having a wave shape...the distance between adjacent sides of a wave...a wave is a minimum at a point intermediate opposite peaks" makes it unclear what subject matter being claimed.

In response, Applicant submits that the subject language is clear to one skilled in the art. As to the first comment, Applicant calls to the attention of the Examiner the first paragraph on page 7 of the application as filed, reproduced below:

The "end/beginning" point of the wave segments, which occurs at the same phase point in each wave, is arbitrary, and for purposes of illustration is indicated at a point, such as indicated at 30, 32, 34, which is near the top of the loop in the upper looped peak of each wave segment. Thus, wave segment 18  
5 is defined as the portion of the wire element between points 30, 32, and segment 20, as the portion of the element between points 32, 34.

Attachment A, which accompanies this response, shows an annotated figure 3 of the present application. A segment, as described above, is highlighted in attachment A. As is clear from the specification, a wave segment is one wavelength long.

As for the latter comment, Applicant notes, as discussed above, that the claim language in question has been amended in claim 1 and claim 13 has been similarly amended. As shown in Attachment A, an annotated version of Fig. 3 of the application along with an enlarged portion thereof, the distance between adjacent sides 36 and 38 of a wave segment decreases along a portion of the segment to a minimum (the minimum distance occurs is at 'Min') and thereafter increases along a portion of the segment.

As such, the claim language is clear to one skilled in the art and withdrawal of the rejection is respectfully requested.

### ***§103 Rejections***

(8)

Claims 1-5 were rejected under 35 USC §103(a) as being unpatentable over Lindenberg et al. (6,053,941) in view of Lauterjung (5,630,829). The Office Action acknowledges that Lindenberg does not teach a stent where:

each segment having a wave shape such that, in the stent's expanded state, the distance between adjacent sides of a wave on proceeding from a peak toward

**BEST AVAILABLE COPY**

Application No. 09/715878  
Page 8

Amendment  
Attorney Docket No. S63.2P-10978-US02

opposite peaks, increases monotonically with an inflection point there between, and in the stent's contracted state, the distance between adjacent sides of a wave is a minimum at a point intermediate opposite peaks.

Rather, the Office Action relies on Lauterjung for such a teaching.

In response to the official action, Applicant respectfully traverses. The rejection fails because, among other reasons, Lindenberg et al. and Lauterjung fail to teach a stent, wherein in the contracted state, *"the distance between adjacent sides of a wave segment decreases along a portion of the segment to a minimum and thereafter increases along a portion of the segment"* as required by claim 1. As to the disclosure of Lauterjung, the figures pointed out in the official action do not show a distance between adjacent sides which decreases and thereafter increases. The distance simply decreases.

Also, Lindenberg et al. do not disclose a stent, "wherein radial expansion of the stent from its contracted to its expanded state is accommodated by movement of adjacent wave-segment peaks away from one other, without significant change in the axial dimension of the stent", as asserted in the official action. The "wave" configuration of the stent disclosed is V-shaped with straight sides. As the stent expands, it markedly foreshortens. The wave configuration disclosed can not be said to prevent significant change in the axial dimension of the stent upon expansion, as required by the claims. Similarly, this also cannot be said about the stent disclosed in Lauterjung, as illustrated in figures 1 (expanded state) and 3 (contracted state).

Further as to claim 3, which includes the limitation that the stent has a stress-induced martensite phase at body temperature, Applicant notes that the official action maintains that this feature is inherent in Lindenberg (see the first paragraph on page 4 of the official action). Lindenberg is silent as to the presence of a stress-induced martensite phase at room temperature. To the extent that the Examiner considers this feature to be inherent in Lindenberg, Applicant hereby requests documentation demonstrating the inherency.

For the above reasons, withdrawal of the rejection is respectfully requested.

(9)

Claims 6-7 were rejected under 35 USC, 103(a) as being unpatentable over Lindenberg et al. '941 in view of Lauterjung '388, further in view of Pinchasik et al. (5449373).

In response Applicant respectfully traverses. Among other reasons, since the

**Application No. 09/715878**  
**Page 9**

**Amendment**  
**Attorney Docket No. S63.2P-10978-US02**

rejection depends upon the rejection of paragraph 8 of the official action, it similarly fails for the reasons stated above in response to the rejection of paragraph 8. As such, withdrawal of the rejection is requested.

(10)

Claims 8-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lindenberg et al. '941 in view of Lauterjung '388, further in view of Pinchasik et al. '373 and further in view of Ritchart et al. (4,994,069).

In response Applicant respectfully traverses. Among other reasons, since the rejection depends upon the rejection of paragraph 8 of the official action, it similarly fails for the reasons stated above in response to the rejection of paragraph 8. As such, withdrawal of the rejection is requested.

Further as to claims 9 and 15, which includes the limitation that the stent is held in its contracted state in a stress-induced martensite state, Lindenberg is silent as to this feature. For at least this additional reason, claim 9 is patentable over the cited combination.

#### CONCLUSION

The claims are now believed to be in condition for allowance. The prompt allowance of these claims is earnestly solicited. If the Examiner wishes to discuss further issues, the Examiner is invited to contact the undersigned.

Respectfully submitted,

VIDAS ARRETT & STEINKRAUS

Date: April 26, 2005

By: 

William E. Anderson II  
Registration No.: 37766

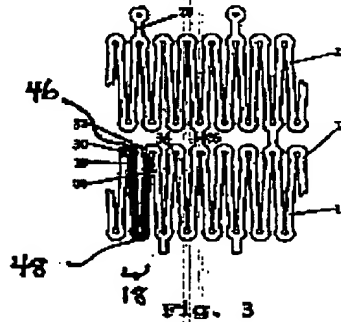
Enclosure: Attachment A  
6109 Blue Circle Drive, Suite 2000  
Minnetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001

**BEST AVAILABLE COPY**

Application No. 09/715878  
Page 10

Amendment  
Attorney Docket No. S63.2P-10978-US02

Attachment A



f:\wpwork\jg\10978us02\_amd\_20050422.jg.doc

